

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

R. A. OLAZARRA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3042

Decision No. CU 1177

Counsel for claimant:

Manuel Zaiac, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$285,382.55, was presented by R. A. OLAZARRA, and is based upon the asserted loss of improved and unimproved real property; personal property; bank deposits; and stock interests in Medical Products, S.A., a Cuban corporation. Claimant stated that he has been a national of the United States since his birth; however, no evidence has been submitted to establish claimant's nationality.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

In support of this claim filed on May 1, 1967, claimant submitted only his own statements and photocopies of two Cuban laws, with English translations, as published in the "Official Gazette". The file also contains records of the Department of State, which are comprised of claimant's own statements and a copy of an auditors report for Medical Products, S.A. dated December 31, 1959.

By Commission letter of June 20, 1967, claimant was advised, through counsel, to submit certain additional evidence necessary to establish his claim under the Act. Specifically, the Commission suggested that claimant submit evidence to establish dates of purchase and consideration paid therefor; evidence to prove his ownership of bank funds and the loss thereof; and evidence to establish ownership, loss, and value of certain items of personal property. In addition, he was furnished forms with which he might request Commission assistance in obtaining evidence regarding the claimed items of real property.

In answer to this request, by letter of September 27, 1967, counsel for claimant submitted a photocopy of a document relating to claimant's birth, and a photocopy of a photograph of a building which was assertedly leased to Medical Products, S.A.

Subsequently, and on October 2, 1967, counsel for claimant indicated that he would attempt to submit the remaining additional evidence within a short time. Finally, by Commission letter of October 13, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. In response to this request for additional evidence, by letter of January 8, 1968, counsel submitted affidavits from three former residents of Cuba.

The Commission has examined all of the evidence of record, including the recently submitted third party affidavits, and finds said evidence to be not persuasive in establishing the elements of a compensable claim under the Act. Accordingly, the Commission finds that the claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C., and entered as the Proposed Decision of the Commission

FEB 7 1968

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

is a true and correct copy of the Commission's decision on MAR 14 1968

Handwritten initials and marks on the right margin.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)